

FILED
05-649 NOV 14 2005

No. _____

OFFICE OF THE CLERK

In The
Supreme Court of the United States

RITA ANN HUMPHREY,

Petitioner,

v.

THE STATE OF WYOMING,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Wyoming**

PETITION FOR A WRIT OF CERTIORARI

MICHAEL J. KRAMPNER
KRAMPNER, FULLER AND
HAMBRICK, LLC
Attorneys At Law
242 South Grant
Casper, Wyoming 82601
(307) 265-3455

Dated: November 14, 2005

QUESTION PRESENTED

1. WHETHER THE TWENTY-FIVE YEARS BETWEEN THE FIRST FILING OF A CRIMINAL CHARGE AND THE FIRST SCHEDULED TRIAL DATE SHOULD BE COUNTED FOR SPEEDY TRIAL PURPOSES WHEN NO FORMAL CHARGE WAS PENDING DURING TWENTY-FOUR YEARS OF THAT TIME?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES	v
THE OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE.....	2
1. The State District Court Decision.....	4
2. The Wyoming Supreme Court's Decision	5
REASONS WHY THE WRIT SHOULD BE GRANTED....	7
I. THE WYOMING SUPREME COURT'S DECISION DECIDES AN IMPORTANT FEDERAL QUESTION IN A MANNER INCONSISTENT WITH <i>BARKER V. WINGO</i> AND <i>DOGGETT V. UNITED STATES</i> , IN THAT THE WYOMING SUPREME COURT DID NOT CONSIDER HOW THE INTERCHARGING DELAY, BETWEEN DISMISSAL IN 1980 AND REFILING IN 2004, WOULD AFFECT THE DEFENDANT'S RIGHT TO A FAIR ADJUDICATION. <i>BARKER</i> AND <i>DOGGETT</i> REQUIRE THAT IN SOME CIRCUMSTANCES AND FOR SOME PURPOSES, INTERCHARGING DELAY BE CONSIDERED IN MAKING A SPEEDY TRIAL CLAUSE CALCULATION OF "THE LENGTH OF THE DELAY".....	7
A. <i>Pre Barker v. Wingo</i> Cases	7
B. <i>Barker v. Wingo</i>	8
C. <i>MacDonald and Loud Hawk</i>	9

TABLE OF CONTENTS - Continued

	Page
D. <i>Doggett v. United States</i>	11
E. Post Doggett Cases	12
F. The Speedy Trial Clause in Context	12
CONCLUSION	14

TABLE OF CONTENTS – Continued

	Page
INDEX TO APPENDICES	
APPENDIX A: Decision Of The Wyoming Supreme Court Reversing The District Court's Decision Dismissing Case For Speedy Trial Violation on Petition For Review.....	App. 1
APPENDIX B: Order Of The District Court Dismissing Charge	App. 11

TABLE OF AUTHORITIES

	Page
CASES	
<i>Barker v. Wingo</i> , 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)	<i>passim</i>
<i>Branch v. United States</i> , 372 A.2d 998 (D.C. 1977)	9
<i>Clark v. State</i> , 629 A.2d 1322 (Md. 1993)	10, 11
<i>Crawford v. Washington</i> , 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).....	13
<i>Doggett v. United States</i> , 505 U.S. 647, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992).....	6, 7, 11, 12, 14
<i>Roberts v. Ohio</i> , 448 U.S. 56, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980)	13
<i>State v. Brazell</i> , 480 S.E.2d 64 (S. Car. 1997).....	10
<i>State of Wyoming v. Humphrey</i> , 2005 WY 131, 120 P.3d 1027 (Wyo. 2005).....	4
<i>United States v. Avalas</i> , 541 F.2d 1100 (5th Cir. 1976)	9
<i>United States v. Hill</i> , 310 F.2d 601 (4th Cir. 1962).....	7
<i>United States v. McKee</i> , 332 F. Supp. 823 (D. Wyo. 1971)	9
<i>United States v. Loud Hawk</i> , 474 U.S. 302, 106 S. Ct. 648, 88 L. Ed. 2d 640 (1986).....	6, 10, 11, 13, 14
<i>United States v. MacDonald</i> , 456 U.S. 1, 102 S. Ct. 1497, 71 L. Ed. 2d 696 (1982).....	<i>passim</i>
<i>United States v. Reardop</i> , 787 F.2d 512 (10th Cir. 1986)	11
<i>Wooten v. State</i> , 426 S.E.2d 552 (Ga. 1993)	10

TABLE OF AUTHORITIES - Continued

	Page
CONSTITUTION	
U.S. Const. amend. VI.....	1, 2, 12, 13, 14
U.S. Const. amend. XIV	2

THE OPINIONS BELOW

The opinion of the District Court for the Seventh Judicial District Of Wyoming at Natrona County, Wyoming dismissing the charge of First Degree Murder is attached as Appendix B. The District Court's Order which incorporated that opinion is attached as Appendix B.

The Opinion of the Supreme Court Of The State Of Wyoming reversing that District Court decision on the State's Petition For Review is attached as Appendix A.

JURISDICTION

The date on which the decision of the Supreme Court of Wyoming was entered was October 6, 2005. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 23, 1977 Jack Humphrey, Rita Humphrey's husband, died from a single gunshot wound to the head. On April 11, 1980, a Natrona County, Wyoming grand jury returned an indictment against Rita Humphrey charging her with first degree murder in the death of her husband, Jack. Rita Humphrey was arrested on April 11, 1980. On April 14, 1980, Rita Humphrey requested a preliminary hearing before the Natrona County, Wyoming County Court.

A preliminary hearing began on June 23, 1980 with Mrs. Humphrey waiving her right to have a preliminary hearing within twenty (20) days of arrest under state court rules, but specifically and by separate filing demanded a speedy trial as guaranteed by the Sixth and Fourteenth Amendments.

At the preliminary hearing, the State failed to produce evidence of probable cause to believe Rita Humphrey had committed the charged offense, and the County Court

entered an Order finding no probable cause on July 2, 1980. The State District Court in which the indictment had been filed, entered it's Order dismissing the case on August 22, 1980.

Between August, 1980 and the refiling of the same charge on March 5, 2004, much of the evidence favorable and necessary to Rita Humphrey's defense disappeared, was lost, or was destroyed. In that same time period, from August of 1980 to March of 2004, many of the witnesses favorable to Rita Humphrey's defense, and necessary to showing her innocence died or forgot important facts in the case.

The State refiled the same first degree murder charge against Rita Humphrey on March 5, 2004, and she was again arrested on that charge. At the hearing on the Motion To Dismiss For Speedy Trial Violation on October 28, 2004 the State District Court specifically found that (1) the delay in bringing Rita Humphrey to trial included not only the fourteen months during which charges were pending but also the approximately twenty-four (24) years and four (4) months between the dismissal of the case in 1980 and the refiling in 2004; (2) no portion of the delay was attributable to Mrs. Humphrey or caused by her; (3) Mrs. Humphrey had asserted her right to a speedy trial in 1980; and, (4) there was substantial prejudice to Mrs. Humphrey's ability to have a fair trial due to the disappearance, loss and destruction of evidence and the deaths and loss of memory of witnesses during the time between the filing of the case in 1980 and the decision on the Motion To Dismiss in 2004. Based on those findings the District Court dismissed the case.

The State petitioned for review to the Wyoming Supreme Court, and the Wyoming Supreme Court granted review of the District Court's decision. The only issue of law presented to the Wyoming Supreme Court, and the only issue decided by that Court was:

Did the District Court err in including time when no charges were pending in determining whether Respondent's (Mrs. Humphrey's) rights under the Speedy Trial Clause of the Sixth Amendment to the United States Constitution and Article I Section 6 of the Wyoming Constitution were violated?

That issue and no other was decided by the Wyoming Supreme Court in its decision of October 6, 2005 reported as *The State of Wyoming v. Humphrey*, 2005 WY 131, 120 P.3d 1027 (Wyo. 2005).

The issue presented to the Wyoming Supreme Court and to this Court is whether the time between the first dismissal of the case in August 1980, and the refiling of the case in March of 2004 should be counted for any purpose or at all in determining the "length of the delay" in bringing a defendant to trial under *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

1. The State District Court Decision

The State District Court found that the four factor test of *Barker v. Wingo*, *supra*, should be applied and that the time between dismissal and refiling should be counted in determining whether there was a speedy trial violation. Appendix B. That Court also found that Mrs. Humphrey did not cause any part of the delay, that she had asserted

her speedy trial rights early, and that substantial prejudice accrued due to the delay, saying:

"It is necessary to conclude in the matter at hand that the length of the delay is both presumptively prejudicial and significantly long. [Citation omitted]. Further, the State has failed to meet its burden to prove that the delays in bringing the Defendant to trial in this case are reasonable and necessary." (Appendix B @ pp. 6, 7.)

The District Court reviewed the list of evidence, records and physical items, including earlier court records which had been lost, destroyed and misplaced, and the witnesses who had died in the intervening twenty-four years, and concluded:

"The speedy trial analysis in this case, without any doubt, results in a conclusion that the prejudice suffered by the defendant as a result of the delay in bringing her to trial is significant". (Appendix B @ p. 8.)

The District Court recounted the catalogue of disappeared, missing and destroyed evidence, and of deceased witnesses in detail, and held that a speedy trial violation had occurred and the case should be dismissed.

2. The Wyoming Supreme Court's Decision

The Wyoming Supreme Court's decision addressed only the issue of whether the time between the first dismissal of the charge in August 1980 and the time the charge was refiled in March, 2004 should be counted for speedy trial analysis under *Barker v. Wingo, supra*. Relying on *United States v. MacDonald*, 456 U.S. 1, 6-7, 102 S. Ct. 1497, 1501, 71 L. Ed. 2d 696 (1982) and *United*